IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.352 OF 1989

The Special Land Acquisition)
Officer (13), Pune) ... Appellant

V/s.

Nivrutti Nana Kale)
since deceased, by his Legal Heirs:)
1. Chhabbabai Janardan Paigude)
2. Lochanabai Zumber Jagtap)
3. Nababai Nivrutti Kale)
4. Sajabai Nvirutti Kale)
all of HIngni Bordi, Tq.:Dhond)
Dist.: Pune) ... Respondents

Mrs.G.P. Mulekar, AGP, for Appellant
None for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 21, 2004**

ORAL JUDGMENT:

. This First Appeal is directed against the order in Land Acquisition Reference No.7 of 1986. The land situated in Village Hingni Berdi, Tal.: Daund, District: Pune was acquired by Special Land Acquisition Officer, Pune for resettlement of the project affected displaced persons. A notification under section 4 of the Land Acquisition Act (for short, ‘the Act’) was issued on 3.3.1977. A notice subsequently was issued under section 6 of the Act and award in respect of the acquisition was passed prior to 30.4.1982. Thereafter,

a notice under section 12(2) of the Act was served on the claimants. On 30.4.1983, the judgment in Land Acquisition Reference No.329 of 1982 was passed in respect of the land acquired in Taluka Daund under the same notification. On 26.4.1985, certain other land acquisition references in respect of the land acquired under the same notification were also decided. On 9.9.1985, the claimants i.e., Respondents herein applied to the Collector for enhancement under section 28A of the Act. A case was made out by the claimants that the increase granted to the claimants in certain other References in respect of the lands acquired under the same notification should be granted to them. The Special Land Acquisition Officer rejected the application on 17.10.1985. A Reference was then preferred by the claimants under section 18 of the Act on 5.11.1985 and by order dated 31.3.1987, the Joint District Judge, Pune allowed the Reference by awarding compensation @Rs.10,000/- per hectare. Accordingly, the claimants, that is, the respondents herein were granted Rs.8,000/-. By the impugned judgment and order, the claimants have been granted the difference in the compensation awarded and 30% as solatium and 12% as interest under section 23(1A) of the Act.

2. The principal contention by the State is that any claim for enhancement of on compensation under

section 28A of the Act, on the basis of the awards in respect of other lands acquired under the same notification should be made within the limitation prescribed thereunder. The first award made in respect of lands acquired under the same notification was of 30.4.1983 which was passed in Land Acquisition Reference No.329 of 1982. Therefore, according to the Appellant the application under section 28A ought to have been made within three months from 30.4.1983.

3. Mrs.Mulekar, learned Assistant Government Pleader appearing for the State, very fairly brings to my notice the judgment of the Supreme Court in the case of *Union of India & anr. v/s. Pradeep Kumari & Ors.*, **(1995) 2 SCC 736,** where the Apex Court has held that section 28A is prospective in nature. The Apex Court in the case of *Babu Ram & Others v/s. State of U.P. and anr.*, **(1995) 2 SCC 689** and in Union of India v/s. Karnail Singh & Ors., (1995) 2 SCC 728 had taken the view that the period of three months prescribed for moving an application for redetermination for compensation under section 28A of the Act has to be computed from the date of making the first award. However, in the case of *Pradeep Kumari* (supra), a 3-Judge Bench of the Apex Court has held that the earlier view could not be accepted by them. After considering the statement of objects and reasons for

enactment of section 28A, the Apex Court observed thus:

> 9. A perusal of the provisions contained in sub-section (1) of Section 28-A of the Act would show that after an award is made under Part III whereby the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, a right accrues to a person interested in the other land covered by the same notification under sub-section (1) of Section 4 who is also aggrieved by the award of the Collector but who had not made an application to the Collector under Section 18, to move an application before the Collector for redetermination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the court. This application for redetermination of the compensation is required to be made within three months from the date of the award of the court. The right to make the application under Section 28-A arises from the award of the court on the basis of which the person making the application is seeking redetermination of the compensation. There is nothing in sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the court after the coming into force of Section 28-A. By construing the expression "where in an award under this Part" in sub-section 91) of Section 28-A to mean "where in the first award made by the court under this Part", the word 'first', which is not found in sub-section (1) of Section 28-A, is being read therein and thereby the amplitude of the said provision is being curtailed so as to restrict the benefit conferred by it. In the matter of construction of a beneficent provision it is not permissible by judicial interpretation to read words which are not there and thereby restrict the scope of the said provision. (see: Jnan Ranjan Sen Gupta v. Arun Kumar Bose, (1975) 2 SCC 526."

4. According to the Apex Court, the provisions of section 28A did not indicate that the Legislature intended to confer a limited benefit to a person to claim redetermination of compensation only on the basis

of the first award made in respect of the lands covered under the same notification. The Apex Court was therefore, of the view that the benefit of redetermination of the amount of compensation under section 28A can be availed of on the basis of any one of the awards that has been made by the Court after coming into force of section 28A provided the applicant seeking such a benefit makes the application under section 28A within the prescribed period of three months from making of the award on the basis of which the redetermination is sought.

5. In any event, in the present case, the first award was made even prior to the insertion of section 28A on to the statute book. The application for redetermination has been made within a period of three months from the date of the award in land acquisition reference No.148 of 1983 which was decided on 26.4.1985. Therefore, the claimants have made the application within the stipulated time.

6. No other contentions are raised on behalf of the appellants. First Appeal dismissed.